BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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| In the Matter of | ) | |
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| Billed Party Preference for 0+ InterLATA Calls | ) | CC Docket No. 92-77 |
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## REPLY COMMENTS OF TIME WARNER COMMUNICATIONS

Time Warner Communications ("TWC") hereby submits the following Reply Comments in response to the Commission's June 6, 1994 Further Notice of Proposed Rulemaking ("Further Notice") in the above-referenced proceeding.[1] In particular, TWC wishes to address the impact of billed party preference ("BPP") on the development of competition in local telecommunications services markets.[2]

While TWC supports the Commission's overall objectives in this proceeding, i.e., the promotion of competition and the protection of consumers, TWC shares a number of the concerns expressed by commenting parties, both with regard to the relative

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[1] In the Matter of Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking ("Further Notice"), 9 FCC Rcd 3320 (1994).

[2] In its Further Notice, the Commission noted that the existing record "does not fully reflect the potential impact that BPP could have on competition in the local exchange." Further Notice at 3328.

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costs and benefits of BPP and, in particular, the adverse impact which implementation of the proposal described in the Further Notice is likely to have on the ability of TWC and other new entrants to become viable competitors to the well-entrenched incumbent providers of local exchange and exchange access services.

In the Further Notice, the Commission, based on the information then before it, estimated that BPP would provide savings of approximately $620 million per year with costs of only $420 million per year, for a net benefit of approximately $200 million per year.[3] However, comments submitted in response to the Further Notice indicate that the Commission's cost estimate significantly understates the actual costs that will be imposed on the local exchange carriers ("LECs") and, ultimately, on consumers.[4] These costs will be especially burdensome to new entrants in the local services marketplace. Moreover, as several parties to this proceeding have noted,[5] implementation of BPP as

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[3] Further Notice at 3327-28. In its notice, the Commission acknowledges that its estimate of savings to consumers "would be reduced somewhat if [as is likely] premises owners sought to replace lost commissions with direct surcharges or other price increases." Id. at 3327, n.60.

[4] For example, one major LEC has estimated that BPP will cost the industry $527 million per year. See NYNEX Comments at 12. With regard to the prospective "savings" described in the Further Notice, it has been estimated that the consumer benefits in fact will not exceed $235 million per year. Id. at 3. By this measure, the costs of BPP clearly outweigh the potential benefits.

[5] See e.g., Comments of Metropolitan Fiber Systems ("MFS Comments") at 3-6; Teleport Comments at 2, 8-10; also see Reply (continued...)

described in the Further Notice will significantly impede the development of alternative local service providers in other ways as well.

Under the regulatory framework proposed in the Further Notice, TWC would be required either to provide BPP service through its own operator services switch ("OSS") or to request that the LECs perform this function for it. In either case, the imposition of BPP obligations will inhibit TWC's ability to become a viable competitor in the local services marketplace. If TWC were to attempt to provide its own BPP service, it would face the same problem as other local carriers -- high initial capital outlays with inadequate cost recovery. Moreover, as a new entrant, TWC would have a much smaller customer base than the incumbent LECs to support the substantial costs of implementing BPP. On the other hand, if TWC is forced to rely on the incumbent LECs' facilities to provide BPP, implementation of BPP would effectively give the LECs "bottleneck" control over 0+ calling services.

Because of the significant costs involved, BPP is likely to result in all 0+ calls being routed through LEC facilities, even when originating from a location served by a competing local service provider. As MFS has observed, if BPP were adopted, as a practical matter, an 0+ call originating from

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[5](...continued)
Comments of Metropolitan Fiber Systems, Inc. (Aug. 27, 1992); Association for Local Telecommunications Services ("ALTS"), ex parte filing (Jan. 10, 1994).

a phone served by an alternative provider would have to be forwarded to the incumbent LEC's OSS, which, if necessary, would query the line information database ("LIDB") to determine the billed party's preferred operator services provider ("OSP"); the call then would be routed either to the alternative local carrier or to the incumbent LEC for transmission to the chosen OSP.[6] In either case, the new entrant would have to depend on the incumbent's facilities and services to process the call.[7]

Imposition of a BPP obligation that effectively requires alternative local services providers to route all 0+ interLATA calls through the incumbent LEC would thereby create a substantial and structural barrier to full-scale competition in local services, at a time when competition in this area is still in its infancy. TWC urges the Commission, in calculating the costs of BPP, to take into account the loss to consumers of savings that otherwise would result from increased competition in the local exchange, in the absence of BPP.

In considering whether the imposition of these costs on the industry and consumers is warranted, the Commission also

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[6] See MFS Comments at 4.

[7] Id. It is unlikely that a new entrant could build its own LIDB, given its small initial market share; at this stage in its development, the expense of building and maintaining its own database would be far greater than the cost of paying the incumbent LEC for its services. See MFS Comments at 4-5. (Of course, in the absence of effective regulatory oversight, an incumbent LEC could price its BPP-related facilities and services at a level that makes it more difficult for new entrants to compete effectively against the incumbent's local service offerings. See Teleport Comments at 9-10.)

should consider the availability of alternative means for consumers to select an OSP, which do not impose substantial additional costs on existing and emerging local service providers and their customers. As several commenters point out, most 0+ payphone calls are made on a dial-around basis that avoids the premise owner's presubscribed operator services carrier.[8] For example, MCI and AT&T are heavily advertising their 1-800 operator services, and they clearly expect huge increases in the proportion of payphone calls that will use these services.

To the extent the Commission is concerned about the remaining calls that would be sent to operator service providers not selected by the billed party, it could adopt other measures, such as a benchmark price cap on OSP rates of 10% above the weighted average charge for operator calls handled by AT&T and other major carriers. Such an approach would yield most of the consumer benefits of BPP, without imposing substantial additional costs on service providers and consumers, and without impairing the continued development of competition in local telecommunications markets.

For the foregoing reasons, TWC strongly urges the Commission to consider alternatives to BPP of the sort described above, so that the resources which would otherwise be used to implement BPP can be redirected toward furthering the Commission's goal of fostering real competition in the local services marketplace. In this regard, TWC believes that

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[8] See NYNEX Comments at 4; Teleport Comments at 5.

implementation of number portability is as critical, if not more critical, to the development of competition in local services as equal access was to the development of interexchange competition. A strong commitment of Commission and industry resources to the expeditious development and implementation of true number portability would greatly advance the goal of effective competition in local services and the full realization of the enormous benefits that full-scale competition in this area promises to yield to American consumers and businesses.

Respectfully submitted,

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